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Attorneys for Defendant  
 SEA ENGINEERING, INC.

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|                                    |   |                                 |
|------------------------------------|---|---------------------------------|
| BRANDON BIRICH,                    | ) | CASE NO. C09-04038 MEJ          |
|                                    | ) |                                 |
| Plaintiff,                         | ) | <b>STIPULATION AND ORDER OF</b> |
|                                    | ) | <b>REMAND</b>                   |
| vs.                                | ) |                                 |
|                                    | ) |                                 |
| SEA ENGINEERING, INC.; DOES 1-100, | ) | Complaint Filed: July 16, 2009  |
|                                    | ) |                                 |
| Defendants.                        | ) |                                 |

On August 31, 2009, defendant Sea Engineering, Inc. ("Defendant") removed this case from the Alameda County Superior Court where it had been filed on behalf of Brandon Birich ("Plaintiff"). Because there was complete diversity among all of the parties to the original complaint, and because there were no local defendants, the case was properly removed at that time based upon the case of *Kirk v. Noble Drilling* (2009) U.S. Dist. LEXIS 34818. Given the unique nature of the *Kirk* decision, Defendant has agreed to a remand of this case in exchange for a stipulation from Plaintiff to dismiss, without prejudice, his prayer for attorney's fees.

Accordingly, the parties hereby stipulate that this matter be remanded back to the jurisdiction of the Alameda County Superior Court, with each side to bear its own costs and fees in connection with the removal/remand. Within 10 days of service of this court's order of remand, Plaintiff will file a dismissal without prejudice of Plaintiff's prayer for attorney's fees. Within 10 days after service of a conformed copy of that dismissal, Defendant will file an answer to Plaintiff's complaint.

///

The parties further agree that a facsimile copy of any counsel's signature on this stipulation shall be binding as an original for all purposes relating to this stipulation. All persons executing this stipulation hereby acknowledge that they have full authority to do so on behalf of their respective clients

Dated: September 21, 2009

GORDON & REES LLP

By: s/ Jan K. Buddingh, Jr.  
Russell P. Brown  
Jan K. Buddingh, Jr.  
Attorneys for Defendant  
SEA ENGINEERING, INC.

Dated: September 18, 2009

WELTIN, STREB & WELTIN

By: s/ Philip R. Weltin  
Philip R. Weltin  
Attorneys for Plaintiff  
BRANDON BIRICH

**ORDER**

It is hereby ordered that this case is remanded to the jurisdiction of the Alameda County Superior Court, effective immediately. Each side is to bear its costs and fees in connection with the removal/remand and comply with all other terms of their stipulation.

Dated: September 23, 2009

  
\_\_\_\_\_  
HONORABLE MARIA HELENA JAMES  
UNITED STATES DISTRICT MAGISTRATE JUDGE

RUSSELL P. BROWN (SBN: 84505)  
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Attorney for Defendant  
 SEA ENGINEERING, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

|                                    |   |                                |
|------------------------------------|---|--------------------------------|
| BRANDON BIRICH,                    | ) | CASE NO.                       |
|                                    | ) |                                |
| Plaintiff,                         | ) | <b>CERTIFICATE OF SERVICE</b>  |
|                                    | ) |                                |
| vs.                                | ) | Complaint Filed: July 16, 2009 |
|                                    | ) |                                |
| SEA ENGINEERING, INC.; DOES 1-100, | ) |                                |
|                                    | ) |                                |
| Defendants.                        | ) |                                |
|                                    | ) |                                |
|                                    | ) |                                |

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 101 West Broadway, Suite 2000, San Diego, CA 92101. On September 22, 2009, I caused to be served the within document(s), pursuant to 28 U.S.C. § 1746:

**STIPULATION AND [PROPOSED] ORDER OF REMAND**

- ☒ **BY ELECTRONIC FILING.** I caused all of the pages of the above-entitled document(s) to be electronically filed and served on designated recipients through the Electronic Case Filing system for the above-entitled case. The file transmission was reported as successful and a copy of the Electronic Case Filing Receipt will be maintained with the original document(s) in our office
- ☐ **BY FAX** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY CAUSING TO BE PERSONALLY DELIVERED** the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ **BY MAILING** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth below.
- ☐ **BY ELECTRONIC MAIL** by electronically transmitting by email to the e-mail addresses set forth below.

1 ☐ **BY FEDEX** by placing a true copy thereof enclosed in a sealed envelope, at a  
2 station designated for collection and processing of envelopes and packages for  
3 overnight delivery by FedEx as part of the ordinary business practices of Gordon &  
4 Rees LLP described below, addressed as set forth below.

5 Philip R. Weltin  
6 Weltin Law Office, P.C.  
7 1432 Martin Luther King Jr. Way  
8 Oakland, CA 94612  
9 Phone: (510) 251-6060  
10 Fax: (510) 251-6040  
11 E-mail: weltinlawoffice.com  
12 *Attorneys for Plaintiff BRANDON BIRICH*

13 I am readily familiar with the firm's practice of collection and processing correspondence  
14 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
15 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
16 motion of the party served, service is presumed invalid if postal cancellation date or postage  
17 meter date is more than one day after the date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California and the United  
19 States of America that the above is true and correct.

20 Executed on September 22, 2009, at San Diego, California.

21 

22 Pamela Stear